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8			
9	BEFORE THE BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10			
11	STATE OF CAL		
12	In the Matter of the Accusation Against:	Case No. 2009-313	
13	JOHN S. KERR	ACCUSATION	
14	7043 Fielding Street Ypsilanti, MI 48197	, , , , , , , , , , , , , , , , , , ,	
15	Registered Nurse License No. 546059		
16	Respondent.		
17			
18	Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:		
19	<u>PARTIES</u>		
20	1. Complainant brings this Accusation solely in her official capacity as the		
21	Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer		
.22	Affairs.		
23	2. On or about July 29, 1998, the Board issued Registered Nurse License		
24	Number 546059, to John S. Kerr ("Respondent"). The license expired on June 30, 2008, and has		
25	not been renewed.		
26	<i>///</i>		
27	<i>III</i>		
28	///	•	

JURISDICTION

	3.	Business and Professions Code ("Code") section 2750 provides, in	
pertinent par	t, that the	Board may discipline any licensee, including a licensee holding a	
temporary or an inactive license, for any reason provided in Article 3 (commencing with section			
2750) of the	Nursing !	Practice Act.	

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811(b), the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

5. Code section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for the following:

- (a) Unprofessional conduct, which includes, but is not limited to, the following:
- (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions."

REGULATORY PROVISIONS

6. California Code of Regulations, title 16, section 1443, states:

As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

COST RECOVERY

The administrative law judge to direct a licentiate found to have committed a violation or violations of the heensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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BACKGROUND INFORMATION

On or about September 25, 2004, while employed as a traveling nurse by Cross-Country TravCorps of Boca Raton, Florida, Respondent was assigned to the pediatric intensive care unit at Children's Hospital of Central California, located in Madera, California. Respondent was caring for a 2 ½ month old infant who was eight weeks premature, with a history of gastroesophageal reflux, aspiration, umbilical hernia, bilateral cystoceles, chronic lung disease, hypoxemia, and apnea and bradycardia related to being upset and crying. While caring for the infant, Respondent placed the infant on a bed face up to remove the infant's soiled diaper. Respondent held the infant's feet approximately 12 inches off the bed so he could clean the infant. Respondent lost his grip of the infant's legs, at which time the infant's legs fell to the bed. The infant was upset and cried for approximately three minutes and then went into respiratory arrest. The infant was resuscitated and recovered.

FIRST CAUSE FOR DISCIPLINE

(Incompetence)

9. Respondent is subject to discipline under Code section 2761(a), on the grounds of unprofessional conduct, as defined in Code section 2761(a)(1), in that on or about September 25, 2004, while employed as a traveling nurse by Cross-Country TravCorps of Boca Raton, Florida, and assigned to the pediatric intensive care unit at Children's Hospital of Central California, located in Madera, California, Respondent was incompetent, in that while changing a 2 ½ month old infant's diaper, Respondent held the infant's legs 12 inches off of the bed and lost grip of the infant's legs, causing the infant's legs to fall to the bed. The event upset the infant, who had a documented history of apnea and bradycardia due to emotional upset/crying, as more particularly set forth above in paragraph 8.

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WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

Revoking or suspending Registered Nurse License Number 546059, issued to John S. Kerr;

Ordering John S. Kerr, to pay the Board of Registered Nursing the 2. reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

> Taking such other and further action as deemed necessary and proper. 3.

DATED: 6151

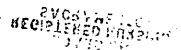
RUTH ANN TERRY, M.P.H., R.N.

Executive Officer

Board of Registered Nursing Department of Consumer Affairs

State of California Complainant

SA2008300954 Accusation (kdg) 12/29/08



BECEINES